

Message Text

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ACTION EB-08

INFO OCT-01 EUR-12 NEA-10 ISO-00 CAB-02 CIAE-00
COME-00 DODE-00 DOTE-00 INR-10 NSAE-00 L-03 /046 W
-----037810 241324Z /45

R 240521Z APR 78
FM AMEMBASSY NEW DELHI
TO AMEMBASSY ROME
INFO SECSTATE WASHDC 1121
AMEMBASSY BRUSSELS
FAA WASHDC
FAA ATLANTA GA
FAA MIAMI FL

LIMITED OFFICIAL USE NEW DELHI 6353

E.O. 11652: N/A
TAGS: EAIR, IN
SUBJECT: OPERATION IN INDIA OF US REGISTERED AIRCRAFT
UNDER FAR PART 91

REF: (A) NEW DELHI 4925, (B) ROME 6250 (NOTAL)

1. THE RELUCTANCE OF INDIAN DEPARTMENT OF CIVIL AVIATION
TO PERMIT US AIRCRAFT CERTIFIED UNDER FAR PART 91 TO
OPERATE COMMERCIALY IN INDIA CONTINUES TO HINDER OPERATORS
HERE WHO ARE SEEKING TO MOVE INDIA'S VOLUMINOUS AIRCARGO
TO THE MIDDLE EAST AND EUROPE.

2. ON APRIL 18, CAPT. H. MCNICOL, JR., CAPTAIN OF A BOEING
707 (N70798) UNDER LEASE TO BAYU INDONESIA FROM A US
OWNER, SOUGHT EMBASSY'S ASSISTANCE IN OBTAINING DGCA
APPROVAL FOR HIS PLANE TO DEPART NEW DELHI WITH FULL CARGO
LOAD FOR FRANKFURT UNDER SUBCHARTER TO AIR INDIA.
EMBOFF ACCOMPANIED HIM TO DGCA HEADQUARTERS. AFTER
CLEARING UP SOME QUESTIONS OF FLIGHT CLEARANCE IRREGU-
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LARITY (CAUSED LARGELY BY MISHANDLING OF AIR INDIA),
DEPUTY DIRECTOR GENERAL SARKAR ASKED WHETHER AIRCRAFT
REGISTERED UNDER PART 121. WHEN MCNICOL REPLIED THAT
IT CARRIED UNDER PART 91, SARKAR SAID IT COULD NOT
CARRY CARGO FOR HIRE AND WOULD HAVE TO LEAVE EMPTY.
MCNICOL ARGUED THAT PART 91 CERTIFICATION DID NOT
PRECLUDE OPERATION FOR HIRE; BAYU HAD BEEN IN BUSINESS

FOR TEN YEARS WITH INTERNATIONAL OPERATION BETWEEN SOUTHEAST AND EUROPE USING LEASED US AIRCRAFT CERTIFIED UNDER PART 91. SARKAR EXPRESSED DISCONTENT OVER BEING UNABLE TO GET A DEFINITIVE ANSWER ON THIS QUESTION FROM US GOVERNMENT. HE AUTHORIZED CLEARANCE FOR BAYU AIRCRAFT PROVIDED EMBASSY MADE FORMAL REQUEST FOR RELEASE AND PROMISED TO PURSUE PART 91 QUESTION.

3. IN THIS AS IN EARLIER CONVERSATION, SARKAR REFERRED VAGUELY TO "ANNEX 6" ASKING RHETORICALLY WHETHER USG ACCEPTED RESPONSIBILITY FOR THESE PLANES UNDER ANNEX 6, AND HOW HE COULD ACCEPT RESPONSIBILITY WHEN HE HAD NO AUTHORITY OVER THEM.

4. ON APRIL 20, REPRESENTATIVE OF AIR EXPRESS BROUGHT TO EMBASSY A COPY OF A LETTER OF NOVEMBER 23, 1977, FROM RAYMOND C. MATTHEWS, CHIEF, TRANSPORT UNIT OF THE FAA GENERAL AVIATION DISTRICT OFFICE, OPA LOCKA, FLORIDA, ADDRESSED TO MR. J.S. KAPOOR OF THE DGCA. ACCORDING TO AIR EXPRESS REP, THE EXISTENCE OF THIS LETTER HAS NEVER BEEN ADMITTED BY DGCA IN DISCUSSING FATE OF N419MA. THIS LETTER SEEMS TO BE CLEAR AND COMPLETE STATEMENT OF FAA POSITION ON THIS COMPLICATED QUESTION. IN LAST SUBSTANTIVE PARAGRAPH, LETTER STATES QUOTE FINALLY, TO EXPLAIN THE INTENT OF THE LEASE OF AIRCRAFT WITHIN OUR REGULATIONS, MAY WE ADVISE YOU THAT LIMITED OFFICIAL USE

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IT IS MEANT TO PERMIT A PERSON TO TRANSPORT HIS OWN GOODS IN THE FURTHERANCE OF HIS OWN BUSINESS. NO OPERATION FOR COMPENSATION OR HIRE IS THEREFORE PERMITTED UNDER FEDERAL AVIATION REGULATIONS PART 91, APPLICABLE TO ANY PERSON CERTIFIED TO CONDUCT SUCH OPERATIONS. IF HUNS AIR IS AUTHORIZED BY YOU TO CONDUCT OPERATIONS FOR COMPENSATION AND HIRE, THEN THE LEASE OF AIRMANMIS AIRCRAFT TO BE USED BY THEM WOULD BE IN ACCORDANCE WITH OUR REGULATIONS. UNQUOTE.

5. AS WE UNDERSTAND THIS LETTER, US REGISTERED AIRCRAFT CERTIFIED UNDER FAR PART 91 MAY OPERATE BETWEEN POINTS OUTSIDE THE UNITED STATES FOR COMPENSATION OR HIRE PROVIDED THREE CONDITIONS ARE MET: (1) THE CREW MUST HOLD APPROPRIATE US AIRMAN AND MEDICAL CERTIFICATES; (2) THE PLANE MUST MAINTAIN A CURRENT AIRWORTHINESS CERTIFICATE; AND (3) THE OPERATOR OF THE PLANE MUST BE CERTIFIED (BY THE AUTHORITIES OF THE COUNTRY IN WHICH IT OPERATES) TO OPERATE FOR COMPENSATION OR HIRE.

6. AIR EXPRESS REP SAID COMPANY WAS PREPARED TO BRING

POLITICAL PRESSURE TO BEAR ON DGCA. IT WAS IN TOUCH WITH MEMBERS OF PARLIAMENT AND HAD ALREADY ARRANGED FOR AN INTERMEDIARY TO DISCUSS PROBLEM DIRECTLY WITH MINISTER OF CIVIL AVIATION.

7. ACTION REQUESTED: WE BELIEVE THAT WE HAVE ENOUGH MATERIAL TO SETTLE THIS ISSUE IF FAA CAN CONFIRM THAT LETTER REFERRED TO IN PARA 4 ABOVE IS AUTHORITATIVE AND THAT PARA 5 IS ADEQUATE SUMMATION OF THE REGULATIONS IN THIS REGARD.

8. CONFIRMATION THAT US REGISTERED AIRCRAFT CARRIED UNDER FAR PART 91 ARE COMMONLY USED FOR COMMERCIAL OPERATIONS -- ALONG THE LINES OF BAYU INDONESIA -- WOULD LIMITED OFFICIAL USE

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BE HELPFUL.

9. WE WOULD ALSO APPRECIATE ANY CLARIFICATION OR COMMENT ON SARKAR'S CONCERN WITH HIS RESPONSIBILITIES UNDER ANNEX 6.

10. LASTLY, AIR EXPRESS REP NOW STATES THAT THE CARGO IT CARRIES IS ACTUALLY OWNED BY ANOTHER PART OF THE SAME COMPANY, HEADQUARTERED IN DUBAI. THEREFORE QUESTION OF OPERATING FOR COMPENSATION MAY NOT ARISE IN THIS PARTICULAR CASE. IT BELIEVES THAT AN AIRCRAFT UNDER PART 91 OPERATING IN FAA JURISDICTION COULD CARRY THE LESSEE'S OWN GOODS. PLEASE CONFIRM IF THIS IS SO.
GOHEEN

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Message Attributes

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Copy: SINGLE
Draft Date: 24 apr 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
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Litigation History:
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